

**Department of
Alcoholic Beverage Control**

INITIAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS FOR

PROPOSED ADOPTIONS TO TITLE 4:

SECTION 105. BEER PRICE POSTING

PROBLEM STATEMENT AND PURPOSE

This update to the Department of Alcoholic Beverage Control (ABC) regulations is a response to a petition by the industry to clarify promotional allowances, which are currently not specified. ABC also intends to define language relating to beer price posting and update beer price posting procedures. This proposed regulation is intended to foster and encourage the orderly wholesale marketing and wholesale distribution of beer while defining terms pertaining to beer price posting. This proposed regulation coincides with ABC's modernization of beer price posting using an online platform accessed through ABC's website to make the requirement more accessible, streamlined, and transparent for all interested parties.

BENEFITS

The proposed regulation is beneficial because it will institute a detailed, standardized, and modernized policy for beer price posting for beer manufacturers, wholesalers, and importers. This proposed regulation also defines promotional allowances within the industry and clarifies what is allowed within the established statutory price posting framework. This clarified language will ensure that all who are required to participate in price posting and who choose to offer promotional pricing are following a uniform set of guidelines providing the best chance at an equitable market for businesses large and small in the beer industry. ABC anticipates that the proposed regulation will promote transparency within the industry by allowing for greater visibility to beer manufacturer and wholesaler prices statewide fostering and encouraging the orderly wholesale marketing and wholesale distribution of beer as statutorily mandated in Business and Professions Code section 25006.

AUTHORITY

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 24208, 25000, 25001, 25002, 25003, 25004, 25753, Business and Professions Code.

NECESSITY

The specific purpose for each proposed section is as follows:

§ 105 (a)

The proposed subsection is necessary to list the definitions to be used throughout the proposed regulation. These definitions consist of terms regularly used by the industry and department when discussing the various elements of the beer price posting process and will ensure the effect of these regulations do not shift upon a change in word usage over time. The definitions will ensure the department, licensees, courts, and the public will know and understand the meaning of the regulations and how they should be applied to the beer price posting requirements.

§ 105 (a) (1)

The proposed subparagraph establishes the definition for “schedule” as used in the proposed regulation and within the online price posting system to mean a list of prices posted by a beer manufacturer, importer, or wholesaler as required by Chapter 12 of the Alcoholic Beverage Control Act, commencing with Business and Professions Code section 25000. This is necessary to trim language from the proposed regulation without a possibility of confusion and to make clear the word always refers to the requirement stated in Business and Professions Code section 25000 when used within the proposed regulation.

§ 105 (a) (2)

The proposed subparagraph establishes the definition for “manufacturer” as used in the proposed regulation to beer manufacturers. This is necessary to trim language from the proposed regulation without a possibility of confusion.

§ 105 (a) (3)

The proposed subparagraph establishes the definition for “trade name” as used in the proposed regulation to mean the same as the brand name identified on the certificate of label approval on file with the Alcohol and Tobacco Tax and Trade Bureau, or the same is if one was required in situations a filing with the Alcohol and Tobacco Tax and Trade Bureau is not required. This is necessary to inform the department, licensees, and the public of the complete definition of “trade name” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion.

§ 105 (a) (4)

The proposed subparagraph establishes the definition for “product name” as used in the proposed regulation to mean the same as the fanciful name identified on the certificate of label approval on file with the Alcohol and Tobacco Tax and Trade Bureau, or if there is no fanciful name, the same as the trade name. This is necessary to trim language from the proposed regulation without a possibility of confusion; and to provide clarity about the relationship between the “product name” and any fanciful name it may have.

§ 105 (a) (4) (i)

The proposed subparagraph clarifies what to do if a “trade name” and a “product name” as filed with the Tobacco Tax and Trade Bureau are identical. This subparagraph is necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (4) (ii)

The proposed subparagraph clarifies what to do if separate beers with different “trade names” or “product names” from one another are in the same combination package. This subparagraph is necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (5)

The proposed subparagraph establishes the definition for “line item” as used in the proposed regulation and within the online price posting system. This is necessary to inform the department, licensees, and the public of the complete definition of “line item” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (6)

The proposed subparagraph establishes the definition for “package configuration,” “single,” and “loose” as used in the proposed regulation and within the online price posting system. This is necessary to inform the public of the complete definition of “package configuration” within the proposed regulation to mean the specific packaging used by a manufacturer or wholesaler when selling beer to its customers. The definition for “package configuration” also includes definitions of “single” and “loose” two terms that are used sometimes interchangeably within the industry for packages that are meant to be separated once they reach the licensed premises of the alcohol retailer meant to be sold to the public individually, even though sold as one package by a manufacturer or wholesaler. This subparagraph is also necessary to trim language from the proposed regulation without a possibility of confusion, and to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (7)

The proposed subparagraph establishes the definition for “size,” “product size,” and “container type” as used in the proposed regulation and within the online price posting system. This is necessary to inform the department, licensees, and the public of the complete definition of “size” and “product size” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (8)

The proposed subparagraph establishes the definition for “prices to” as used in the proposed regulation and within the online price posting system to mean manufacturers, wholesalers, retailers, or customers located within a federal enclave. This is necessary to inform the department, licensees, and the public of the complete definition of “prices to” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (9)

The proposed subparagraph establishes the definition for “receiving method” as used in the proposed regulation and within the online price posting system to mean FOB or delivered. This is necessary to inform the department, licensees, and the public of the complete definition of “receiving method” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (10)

The proposed subparagraph establishes the definition for “FOB” as used in the proposed regulation and within the online price posting system to mean free on board and is to be used if a customer assumes liability at the seller’s licensed premises. This is necessary to inform the department, licensees, and the public of the complete definition of “FOB” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (11)

The proposed subparagraph establishes the definition for “delivered” as used in the proposed regulation and within the online price posting system to mean when the selling licensee is delivering purchased beer to a customer’s premises. This is necessary to inform the department, licensees, and the public of the complete definition of “delivered” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (12)

The proposed subparagraph establishes the definition for “price” as used in the proposed regulation and within the online price posting system to mean the price for the beer to be charged to a purchasing customer. Except as otherwise expressly authorized, the price shall include all charges, surcharges, fees, assessments, discounts, and California Redemption Value (CRV), but shall not include any refundable container charge that is separately identified. This is necessary to inform the department, licensees, and the public of the complete definition of “price” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. The definition also includes the required inputs for calculating the “price” to ensure the proper reporting by licensees and transparency within the beer price posting system.

§ 105 (a) (13)

The proposed subparagraph establishes the definition for “container charge” as used in the proposed regulation and within the online price posting system to mean a refundable deposit that may be assessed for kegs. This is necessary to inform the department, licensees, and the public of the complete definition of “container charge” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (14)

The proposed subparagraph establishes the definition for “posted by” as used in the proposed regulation and within the online price posting system to mean the licensee that establishes prices and posts the schedule. This is necessary to inform the department, licensees, and the public of the complete definition of “posted by” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (15)

The proposed subparagraph establishes the definition for “effective date” as used in the proposed regulation and within the online price posting system to mean either immediately or on the tenth day following the submission of the schedule, pursuant to Business and Professions Code section 25502. This is necessary to inform the department, licensees, and the public of the complete definition of “effective date” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (16)

The proposed subparagraph establishes the definition for “status” as used in the proposed regulation and within the online price posting system to mean either immediately or on the tenth day following the submission of the schedule, pursuant to Business and Professions Code section 25502. This is necessary to inform the department, licensees, and the public of the complete definition of “status” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (17)

The proposed subparagraph establishes the definition for “trading area” as used in the proposed regulation and within the online price posting system to mean a specifically identified area within a county based upon natural geographical differences justifying different prices, as authorized by Business and Professions Code section 25000(a). This is necessary to inform the department, licensees, and the public of the complete definition of “trading area” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (18)

The proposed subparagraph establishes the definition for “competitive price” and “trade area” as used in this provision and within the online price posting system. “Competitive price” means a change to an active price to meet lower filed competing price for the same package configuration, size, county, type of customer, and receiving method in a trade area. “Trade area” means a county or trading area within a county. A competitive price shall not be lower than the competitor’s filed price. This is necessary to

inform the department, licensees, and the public of the complete definition of “competitive price” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (a) (19)

The proposed subparagraph establishes the definition for “price promotion” or “price promotion program” as used in the proposed regulation and within the online price posting system to mean a pricing promotion offered by a manufacturer or importer as authorized by Title 4 California Code of Regulations section 105.2. This is necessary to inform the department, licensees, and the public of the complete definition of “price promotion” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system. This definition, and Title 4 California Code of Regulations section 105.2, ensure no things of value are given between a manufacturer or importer to a wholesaler as a part of price promotion programs in violation of Business and professions Code section 25600. This is necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California.

§ 105 (a) (20)

The proposed subparagraph establishes the definition for “promotional item” as used in the proposed regulation to mean an additional item included in a package that is not beer. This is necessary to inform the department, licensees, and the public of the complete definition of “promotional item” within the proposed regulation and to trim language from the proposed regulation without a possibility of confusion. This subparagraph is also necessary to facilitate the proper reporting by licensees within the department’s online beer price posting system.

§ 105 (b)

The proposed subsection requires all price posting done by beer manufacturers, importers, and wholesalers to be filed through the department’s online price posting system. This subsection is necessary to emphasize the centralized, modernized means for filing price schedules. The department’s online beer price posting system allows for transparency and accountability for all licensees to ensure that posted prices are fair and transparent to the department, licensees, stakeholders, and the public as required by law. This new system fosters and encourages the orderly wholesale marketing and wholesale distribution of beer in California that was not possible under the old paper filing system. The old system was limited in scope and availability for review both by the department, due to limited resources, and licensees or the public, due to limited access.

§ 105 (c)

This subsection clarifies the language in Business and Professions Code section 25000 when it refers to “a written schedule of selling prices,” and “a price schedule for each county.” The proposed subsection is necessary to establish that a beer manufacturer, importer, or wholesaler must only have one posted price for all sales in a specific county and that prices cannot be variable just for “special customers.”

This subsection is necessary to inform licensees what is required to provide if prices are different for a line item between trading areas based upon geographical differences as approved by the department pursuant to Title 4 California Code of Regulations section 105 (g).

§ 105 (d)

This subsection requires beer manufactures, importers, and wholesalers to use the online price posting system to notify the department, other licensees, and the public when a line item has been discontinued or moved to inactive because it will no longer be produced or sold in California. This requirement excludes items which are not currently for sale merely due to being out of stock but will be sold again once stock is available. This subsection also makes it unlawful to sell any item that has been placed on inactive status in the department's online beer price posting system. The proposed subsection is necessary to provide a system through which it is easier to understand what is being sold where and when as is the purpose of Business and Professions Code section 25000 et seq. This will ensure that all prices posted by a beer manufacturer, importer, or wholesaler are transparent, and all interested persons can see what products are currently for sale, and what the purchase price is at any given time. This information is necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California as statutorily mandated by Business and Professions Code section 25006.

§ 105 (e)

This subsection requires beer manufactures, importers, and wholesalers to post prices for every county their customers have a licensed premises for the storage or sale of beer. This subsection clarifies the requirement to post prices pursuant to Business and Professions Code section 25000 et seq. The proposed subsection is necessary to establish how many price schedules are required from each manufacturer, importer, wholesaler, and certificate of compliance holder. It is also necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105 (f)

This subsection requires all posted prices to be available for immediate delivery as required by Business and Professions Code section 25000(a) and clarifies that this requirement of the statute excludes any contract prices for future deliveries of beer and quantity discounts are prohibited from the price posting system. The proposed subsection is necessary to ensure consistency of pricing within a particular area between sellers and buyers. It is also necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105 (g)

This subsection clarifies that a licensee seeking approval of a trading area must provide the information necessary to justify the establishment of the requested trading areas due to natural geographic differences. The proposed subsection is necessary to explain how different trading areas may be

established and whose burden it is to provide the necessary information to establish a geographically separate trading area.

§ 105 (g)(1)

This subsection clarifies what constitutes a natural geographical difference. It specifies that they must be natural, meaning made by nature, such as bodies of water, mountains, or deserts, and do not constitute manmade structures, barriers, or roads. The proposed subsection is necessary to ensure the department, licensees and the public are aware of the types of geological features required to establish a geographically separate trading area by the department within the beer price posting system.

§ 105.1 (a)

The proposed subsection prohibits depletion allowances from being used by beer manufacturers, importers, and wholesalers. This prohibition is necessary because it establishes prices effective only for special customers based on volume that is prohibited under Business and Professions Code 25000. This subsection also defines the term “depletion allowance” as a practice or agreement of any nature which a seller of beer changes the price to a purchaser based upon the quantity of beer purchased or sold. This definition is necessary to ensure universal understanding by the department, licensees, and the public of what constitutes the prohibited practice known as a “depletion allowance.” This subsection is also necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105.1 (b)

The proposed subsection establishes the only type of “price promotion program” allowed within the beer price posting framework to ensure fairness while it fosters and encourages the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state. The reimbursements of the manufacturer or importer in response to a contractual agreement with a wholesaler who has lowered their prices to retailers in the specific contractual way for a certain period can receive these reimbursements without changing the initial purchase price. These price promotion programs, when executed pursuant to Title 4 California Code of Regulations section 105.2, are available to all customers, regardless of location or volume, and will not inhibit the orderly wholesale marketing and wholesale distribution of beer in California. This subsection is necessary to establish what a “price promotion program” is and its broadest boundaries while remaining in compliance with the legal requirements of Business and Professions Code sections 25000 et seq. Licensees required to price post, after learning the transparency of the online price posting program, petitioned the department clarify by this regulation how price promotion programs could legally be done. This request by the industry was the initial request by which the department began the process of promulgating this proposed regulation. This subsection was necessary to inform the department, licensees, and the public what types of price promotions are allowed under the current statutory structure, ensure uniform enforcement, and aid licensees in compliance with the law.

§ 105.2 (a)

The proposed subsection establishes that each of the following subparagraphs must be complied with to be a lawful price promotion program. This subsection is necessary to highlight and clarify the requirements that must be met in order to set up a price promotion program and be compliant with the current statutory structure. This section ensures fairness between sellers and buyers as well as ensuring some measure of consistency in the programs. This subsection is also necessary to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105.2 (a) (1)

The proposed subparagraph establishes the types of offers that a beer manufacturer or importer can make to its wholesalers when creating a price promotion program. The offer must consist of either a specific price the wholesaler must sell to retailers, or a specific amount of reduction from the wholesaler's currently posted price for retailers. This subparagraph is necessary to provide the options for beer manufactures and importers for what can be offered to create a price promotion program to allow wholesalers to be reimbursed for a portion of the beer purchased at the manufacturer's or importer's posted price. Given that prices listed in the schedule cannot be deviated from. This subparagraph is also necessary agreements are transparent when made pursuant to Title 4 California Code of Regulations section 105.2, and do not allow any special customers to take advantage of a price promotion program in any way that is different from other customers of the beer manufacturer or importer to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105.2 (a) (2)

The proposed subparagraph establishes the types of reimbursements a beer manufacturer or importer can make to its wholesalers when reimbursing them at the end of a price promotion program. These must be established as a part of the offer as consideration for a wholesaler lowering their price to retailers as a part of the contractual agreement. This subparagraph is necessary to provide options for beer manufactures and importers as to how much reimbursements can be set at to allow beer manufactures and importers options for making economically sound choices when creating a price promotion program offered to wholesalers. This subparagraph is also necessary to ensure agreements are transparent when made pursuant to Title 4 California Code of Regulations section 105.2, and do not allow any special customers to take advantage of a price promotion program in any way that is different from other customers of the beer manufacturer or importer to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105.2 (a) (2) (i)

The proposed subparagraph establishes, that if the reimbursement chosen by a beer manufacturer or importer is based on a percentage of the reduction in a wholesaler's posted prices to retailers, a beer manufacturer or importer may set a maximum amount of reimbursement per sale. This subparagraph is necessary to establish that a beer manufacturer or importer may provide an upper limit for percentage-

based reimbursements to ensure there are no extremely large reimbursements due to a wholesaler having a significantly high price prior to the price promotion program established. This is also to ensure beer manufacturers or importers can make economically sound decisions when creating their price promotion programs. This subparagraph is also necessary agreements are transparent when made pursuant to Title 4 California Code of Regulations section 105.2, and do not allow any special customers to take advantage of a price promotion program in any way that is different from other customers of the beer manufacturer or importer to foster and encourage the orderly wholesale marketing and wholesale distribution of beer in California by having the transparent posting of beer prices available throughout the state.

§ 105.2 (a) (3)

The proposed subparagraph requires a manufacturer or importer to offer a price promotion under the same terms to all wholesalers they sell beer to throughout the state for any given period. The proposed subparagraph ensures that a manufacturer or importer cannot choose special customers, or geographical areas as a way to choose special customers, for price promotions authorized by this section. The proposed subparagraph is necessary to ensure the fair and transparent use of price promotions within the beer industry while still fostering and encouraging the orderly wholesale marketing and wholesale distribution of beer in California as statutorily mandated by Business and Professions Code section 25006.

§ 105.2 (a) (4)

The proposed subparagraph establishes and a manufacturer or importer establishing a price promotion program must make it available to all wholesalers with which they do business and have made sales in the past. The proposed subparagraph is necessary to give all a seller's wholesale customers notice of a price promotion program. This is to prevent tied-house violations by the manufacturer or importer providing things of value to "special customers" through unique access to specific price promotions. This universal notice will ensure all a manufacturer's or importer's wholesale customers have an equal opportunity to partake in the program thereby fostering and encouraging an orderly wholesale marketing and wholesale distribution of beer in California.

§ 105.2 (a) (4) (i)

The proposed subparagraph requires manufacturers and importers to provide the notice required under Title 4 California Code of Regulations section 105.2(a)(4) at least 15 calendar days prior to the commencement of a price promotion period. The proposed subparagraph is necessary to give sufficient time to the wholesale customers to respond to the price promotion program and that the notice given wholesale customers is not merely nominal.

§ 105.2 (a) (5)

The proposed subparagraph requires a manufacturer or importer to establish the product name, product size, container type, and package configuration for each price posting period it notices to its wholesaler customers pursuant to Title 4 California Code of Regulations section 105.2(a)(3). The proposed

subparagraph is necessary to describe what information must be included in the price promotion program notice for the sake of transparency and for wholesalers to be able to make a fully informed decision whether to participate in any potential price promotion program offered by a manufacturer or importer. This limitation fosters and encourages the orderly wholesale marketing and wholesale distribution of beer in California.

§ 105.2 (a) (5) (i)

The proposed subparagraph allows the manufacturer or importer to notify its wholesalers of multiple products, products sizes, and package configurations in a single notice, but prohibits multiple price promotions for the same specific combination to run concurrently. The proposed subparagraph is necessary to establish limitations for multiple price promotion programs for certain items or set of items to run at the same time. The proposed subparagraph ensures manufacturers and importers do not pick special customers by running concurrent price promotion programs for the same product. This limitation fosters and encourages the orderly wholesale marketing and wholesale distribution of beer in California.

§ 105.2 (a) (6)

The proposed subparagraph establishes the wholesaler's contractual acceptance of the manufacturer's or importer's offer of a price promotion program by facilitating the requested price changes within the department's online price posting system. The proposed subparagraph requires a participating wholesaler to participate in a price promotion program in all counties where it sells beer to retailers and posts prices. The proposed subparagraph is necessary for establishing what a wholesalers' responsibilities are if a wholesaler chooses to participate in a price promotion program. Requiring price consistency across all geographic areas a wholesaler posts its prices ensures a wholesaler cannot choose special customers, through only participating in a price promotion program in certain geographic locations. This limitation fosters and encourages the orderly wholesale marketing and wholesale distribution of beer in California.

§ 105.2 (a) (7)

The proposed subparagraph requires any wholesaler that is changing its posted price within the department's online beer price posting system pursuant to a price promotion program to notify the department of that reason for the change by checking the appropriate box within the department's online beer price posting system. If a wholesaler fails to perform this requirement, the manufacturer is prohibited from reimbursing the wholesaler as a part of the price posting program because participation was not noticed to the department, other licensees, or the public. The proposed subparagraph is necessary to prevent wholesalers from collecting reimbursements from a price promotion program without lowering their prices. This proposed subsection is meant to protect manufactures and importers from fraud and a wholesaler's customers being charged more than they should within the price promotion program. This also provides the department, licensees, and the public with notice that the price has been changed pursuant to a price promotion program and will allow the department to seek records regarding the price promotion program to ensure compliance by all parties with this section if deemed necessary.

§ 105.2 (a) (8)

The proposed subparagraph establishes that a wholesaler must request reimbursement from the manufacturer or importer that established the price promotion program no later than 30 calendar days following the last date of the price promotion program. The proposed subparagraph is necessary to establish a timeframe within which a wholesaler shall request reimbursement. This is, in part, to maintain good business relations between parties, and to give predictability for the seller as to when they have to provide reimbursements by. In addition, this sub paragraph aids the department's enforcement efforts to ensure payments are for a price promotion program, and not some other illegal thing of value.

§ 105.2 (a) (9)

The proposed subparagraph establishes that a manufacturer or importer must pay a participating wholesaler the amount to be reimbursed no later than 30 calendar days following the wholesaler's request for reimbursement. The proposed subparagraph is necessary to provide a timeframe within which a wholesaler shall receive their reimbursement. This also is, in part, to maintain good business relations between parties, and to give predictability to the participating wholesaler. In addition, this sub paragraph aids the department's enforcement efforts to ensure payments are for a price promotion program, and not some other illegal thing of value.

§ 105.2 (a) (10)

The proposed subparagraph requires both the manufacturer or importer, and a wholesaler to retain records of compliance with this section for every price promotion program they establish or participate in for a period of three years. In addition, it makes clear that these required records may be requested by the department for inspection at any time pursuant to Business and Professions Code section 25753. The proposed subparagraph is necessary to require good recordkeeping on the part of manufacturers, importers, and wholesalers involved in a price promotion program and document compliance with Title 4 California Code of Regulations section 105.2. The proposed subparagraph is also necessary to make clear that the department may review those records on request and failure to provide those records may constitute a violation of the ABC Act. This will ensure the department can enforce the provisions of this proposed regulation and ensure payments within price promotion programs are not otherwise illegal things of value between a manufacturer or importer and a wholesaler.

§ 105.2 (a) (11)

The proposed paragraph establishes that if a wholesaler participates in a price promotion and relies in good faith upon reimbursement by the manufacturer or importer, but a manufacturer or importer fails to comply with all the requirements that the civil liability of the manufacturer or importer is not removed, even if the payment of that reimbursement would be a violation of the ABC Act or these proposed regulations. The proposed subparagraph is necessary to protect wholesalers who choose to participate in a price promotion program but are not aware that a manufacturer or importer has failed to comply with the requirements of this section to have a valid price promotion program. Through retaining civil liability for manufacturers and importers, a wholesaler can file suit if needed to be reimbursed even if

that price promotion program was faulty in its execution and reimbursement by the manufacturer or importer would otherwise be a violation of the ABC Act or these regulations.

§ 105.2 (b)

The proposed subsection establishes the commencement of the limitation on administrative actions for a “transaction” pursuant to the Business and Professions Code section 24208 by the department with regards to enforcing a violation within a price promotion program. The “transaction” is defined as either last date upon which reimbursement is due or is made pursuant to subsection (9), whichever is later. In addition, the proposed subsection establishes that a failure to provide records pertaining to a price promotion program to the department upon request shall be deemed to constitute concealment, tolling the limitation pursuant to Business and Professions Code section 24208. The proposed subsection is necessary for two reasons. First, the subsection provides a definition of “transaction” to further clarify the timeline the regulation imposes for any administrative actions brought by the department for a violation that occurs during a price promotion program. Second, the subsection illustrates the consequences of failing to provide the requisite records as tolling the statute of limitations pursuant to Business and Professions Code section 24208 due to concealing the requested records that the department has the right to inspect at any time.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS RELIED UPON.

Articles

There are no articles that pertain to these proposed regulations.

Department and Appeals Board Decisions

There are no Appeals Board decisions that affect these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

ABC has determined that these regulations have a negligible economic impact. Any cost associated with these regulations will be absorbed in ABC’s current budget.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Based on the above, ABC has determined that the proposed regulatory action will not have a significant statewide adverse economic impact to businesses statewide including the ability of California businesses to compete with businesses in other states. Under this proposed regulation, promotional allowances are only authorized on a statewide basis giving all wholesalers equal opportunity to take part in manufacturer’s promotions who in turn shall pass their promotional price to retailers.

There are no anticipated benefits to worker safety or the state's environment because these amendments do not relate to or impact worker safety issues or the environment.

ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION OF BEER PRICE POSTING PROMOTIONAL ALLOWANCES BY ABC

ABC considered three main alternatives for the inclusion of promotional pricing allowances. The most restrictive alternative excluded all promotional allowances. This would restrict manufacturers from any promotional pricing schemes preventing beer manufacturers from offering any promotional pricing to distributors. While this option would simplify the execution of this aspect of the regulation and create a fairer playing field in beer marketing, it would heavily restrict beer manufacturers. This restriction could potentially limit some economic growth in the beer industry.

The second promotional allowance alternative considered by ABC would authorize county by county promotional pricing permitting beer manufacturers to target specific counties and excluding others from access to these promotional pricing opportunities. This promotional pricing scheme is the least restrictive of the options considered. While this strategy strongly favors manufacturers, it could be used to give preference to wholesale businesses in targeted counties. Potential favoritism could create a disproportionate advantage to targeted wholesalers ultimately degrading the equitable market which is the intent of this proposed regulation. This option must also be closely regulated and enforced.

The fairest alternative considered for promotional allowances by manufacturers is to authorize those allowances on a statewide basis instead of targeted counties. If a manufacturer chooses to offer a promotion, by allowing any wholesaler statewide to participate, more wholesalers will have the opportunity to benefit from those promotions. In turn, the participating wholesalers will offer discounts to their retailers who may pass their savings on to retail customers. Because the beer manufacturer must post their promotional allowances on the online beer price posting system, this allows for greater transparency and a fair and equitable pricing scheme for all involved.

REGULATORY MANDATES

This regulatory package creates no new duties or regulatory mandates for licensees, local governments, or the Department.